

(404) 365-9015

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9
10 Also present: Ms. Deborah Danos

11 - - -

12 MS. JONES: We had 25 exhibits on that
13 first deposition. We will start this deposition
14 with Plaintiff's Exhibit No. 26 then so we'll
15 have a nice orderly transition here. And
16 Ms. Leathers, you are still under oath. And
17 basically I want to ask you questions about some
18 of the prior church and places of worship
19 zonings and use permits that have been issued by
20 the City of Sandy Springs.

21 (Documents were marked for
22 identification as Plaintiff's Exhibit
23 No. 26.)

24 Q (By Ms. Jones) Now, I am going to show you
25 what has been marked as Plaintiff's Exhibit No. 26

1 which I received from your attorney.

2 Are you familiar with that document?

3 A Yes, I am.

4 Q And you verified -- these are the Second,
5 Response to Plaintiff's Second Interrogatories and
6 Request for Production of Documents. You verified
7 the City's First Response to the, Response to the
8 First Interrogatories and Request for Documents, but
9 I don't see a verification on this document.

10 MS. HENDERSON: There isn't because I
11 let it slip through the cracks when I was
12 working on Supreme Court briefs in another case.
13 It's my fault.

14 Q (By Ms. Jones) Do you represent today that
15 you will be the person who will verify the
16 information in these interrogatory responses and
17 these are your responses?

18 A Yes.

19 Q You provided them to Ms. Henderson?

20 A Yes.

21 Q Now, let me also get you to, I have here a
22 certified copy of the Sandy Springs zoning --

23 A Good.

24 Q -- that y'all gave me. I am so happy to
25 have it too, I can't tell you. I like to just

1 actually have a paper document instead of having to
2 look online for things. But anyway, I have excerpted
3 out a couple of exhibits from that zoning ordinance,
4 27 and 28. I just want to get you to identify them
5 so we can use them to talk from. And you can look it
6 up in the zoning ordinance if you feel the need to.

7

8 (Documents were marked for
9 identification as Plaintiff's Exhibit
10 Nos. 27 and 28.)

11 MS. HENDERSON: That is probably three
12 copies.

13 THE WITNESS: It is three copies of
14 the same thing.

15 MS. JONES: Oh, okay.

16 THE WITNESS: That's why I was
17 looking. I kept --

18 MS. HENDERSON: And then my --

19 THE WITNESS: -- trying to figure it
20 out.

21 MS. HENDERSON: If that is something
22 that you can to identify by itself, but also
23 look at whether in terms of what it is it
24 appears to be complete in terms of, I don't know
25 what the purpose is on that.

1 Q (By Ms. Jones) Well, if you would like to
2 look in the zoning ordinances to make sure, this is
3 the parking off-site and shared provision is what I
4 am looking at which is that 19-3-6 paren 1 section.

5 A Yes. It's, it's an administrative permit
6 provision for, for shared parking off-site.

7 Q And then the 28 is the parking ordinance.
8 And I believe I might have just copied the whole --

9 A Uh-huh (affirmative), that appears to be
10 all of Article 18.

11 Q Okay. Good. So we can have those to look
12 at while we are talking about all of these other
13 things. Now, I am going to sort of follow the
14 questions that were asked in the interrogatories to
15 just create a little way that we can approach this.
16 The first question was point out where the maximum
17 capacity or maximum occupancy of each room other than
18 the largest assembly room within the proposed church
19 or place of worship was calculated. And your first
20 response was the Kadampa Meditation Center. And you
21 all have been so generous that I am almost
22 overwhelmed with information.

23 A We aim to please.

24 Q Well, you did please.

25

1

2

(Documents were marked for

3

identification as Plaintiff's Exhibit

4

Nos. 29 and 30.)

5

Q (By Ms. Jones) 6860 Peachtree Dunwoody

6

Road. Now, I'd like to look with you, and I am going

7

to call this No. 29 and 30. Can you identify 29 and

8

30 as being documents that the City produced

9

regarding the rezoning of the Kadampa Meditation

10

Center?

11

A Yes, this is the, site plan is Exhibit 29

12

and the actual case writeup is Exhibit 30. Let me

13

make sure that we've got everything in it, however.

14

This does not include the staff analysis.

15

Q All right.

16

A Council wouldn't act on the staff analysis,

17

but if you are going to ask me about parking

18

calculations and so on, I would give you the staff

19

analysis.

20

21

(Documents were marked for

22

identification as Plaintiff's Exhibit

23

No. 31.)

24

Q (By Ms. Jones) Well, let me show you 31. I

25

think that is the staff analysis.

1 A I'm not trying to be difficult. I just --

2 Q I actually copied the staff analysis, so I
3 will give it to you. I want you to be able to answer
4 in an intelligent accurate way.

5 A I do too.

6 Q Is that --

7 A Yes, that is the analysis.

8 Q -- the staff analysis? Would you, and you
9 listed the Kadampa Center as one of those instances
10 where the church requested that the applicant provide
11 the maximum capacity or occupancy of each room other
12 than the largest assembly room.

13 A That's correct.

14 Q And could you run through exactly how you
15 calculated the required parking for the Kadampa
16 Center.

17 A The analysis on the Kadampa Center relates
18 to the fact that there are actually two uses in the
19 facility. There is what we would consider the
20 religious facility and there is also what the staff
21 addresses under the zoning ordinance as a boarding
22 facility. And those parking requirements are
23 separately calculated in here. And that gave us a
24 total of 41 required spaces. And that is what the
25 applicant provided and that was for both. Of those

1 the place of worship required -- let's see. There
2 were two separate calculations that were done. One
3 was the requirements for the place of worship which
4 was a total of 25 spaces or one per three-and-a-half
5 fixed seats. And then in addition, there was a
6 calculation of per one bedroom and five per 1,000
7 square feet of common area for the boarding house for
8 a total of 15 spaces which should total 41, but it
9 totaled 40. But they provided 41.

10 Q So you calculated that using Section 18.2.1
11 of the zoning ordinance that we are looking at here
12 as Plaintiff's Exhibit No. 28; is that correct?

13 A That's correct.

14 Q And you applied, to the church use you
15 applied, the churches and other places of worship
16 without fixed seating -- or is this a fixed --

17 A This was the fixed.

18 Q With fixed seating. So you applied 1.356
19 seats in the largest assembly area for the church
20 use?

21 A Yes.

22 Q And then they had a separate use that was a
23 nonchurch use which was the boarding house or --

24 A Well, it's a --

25 Q -- dormitory use?

1 A -- it is a church-related use, but it is,
2 it is not a normal accessory use for a church. And
3 so therefore, it was calculated as a separate use.

4 Q And it actually has a separate calculation
5 in the zoning ordinance for this type of use; is that
6 correct?

7 A That's correct.

8 Q Where is that listed under, is that listed
9 under boarding houses?

10 A You will have to let me go and look it up.
11 Dormitories and related, yes.

12 Q And that would dormitories, fraternity
13 houses, sorority houses and boarding houses. So if
14 you are using it as one of those things, then you
15 have to apply the one per bedroom plus five per 1,000
16 square feet of common area?

17 A Common area, that's correct.

18 Q Now, what other, are there any other
19 buildings besides the bedrooms and the sanctuary in
20 the Kadampa Center?

21 A I don't have, I don't have the floor plan
22 here. Without the floor plan, I, I couldn't answer
23 that for you. I would expect that there would be
24 some area that people come, an, an entry area that
25 people come into that is over and beyond it, but I

1 don't know other than that. And they may have a, an
2 office, some offices.

3 Q How about in your staff report did you
4 notice or did you note any classrooms or offices or
5 other uses of the property besides the boarding house
6 and the largest assembly area?

7 A I don't believe that we did. And I,
8 without the floor plan before me, I can't tell you
9 what proportion of the area would have been bedrooms
10 and which proportion would be other uses.

11 Q Well, I am looking at the front of your
12 staff report?

13 A Yes.

14 Q I am seeing bedrooms and fixed seats and
15 common area listed.

16 A I understand. And if the, if the remaining
17 space is relatively minor, it would be accessory and
18 wouldn't be separately calculated. And this accounts
19 for the majority of the, the square footage of the
20 building.

21 Q So this, so I just want to be clear that
22 you did not assign a parking requirement if, in fact,
23 there was office space in the Kadampa Center.

24 A That's correct.

25 Q And the same thing, if there were religious

1 classrooms, you did not assign a separate parking
2 requirement for any of those religious classrooms in
3 the Kadampa Center?

4 A We would not, but I don't have the floor
5 plan before me and I can't even tell you that there
6 are those particular kinds of facilities in that
7 building without looking at it.

8 Q But bottom line is you calculated the
9 Kadampa Center required parking using the Sandy
10 Springs Code Section 1821 requirements?

11 A Yes. But let me add that if the areas,
12 the, the accessory areas are relatively minor
13 relative to the total square footage that is covered
14 by the two uses that are parked, they would be
15 considered accessory and wouldn't be calculated.
16 When it's larger, when the, the accessory uses become
17 larger is when we would separately calculate them.

18 Q Now, the Kadampa Center, the zoning of the
19 Kadampa Center had a condition that there shall be no
20 parking in surrounding neighborhoods or office
21 complex without an agreement; is that correct?

22 A Yes.

23 Q How did the City plan to enforce that
24 particular condition?

25 A Well, I don't know that I can tell you

1 because it was added at council. It wasn't a staff
2 condition. I believe that the neighbors raised the
3 issue and were concerned about the parking in the
4 neighborhood. And I can only assume that the council
5 expected that people would complain if the parking
6 occurred there.

7 Q And that was discussed during the hearing?

8 A I believe the, in the public hearing there
9 were comments made and I believe the motion to add
10 that item to the case was made.

11 Q And that was adopted?

12 A Yes.

13 Q That was not your idea?

14 A That was not a staff recommendation.

15 Q All right. That takes care of the Kadampa
16 Center.

17 MS. HENDERSON: Let me ask you, as we
18 go through these, are you planning to ask all
19 your questions, you started going through the
20 interrogatories at Interrogatory No. 1 and we
21 referenced some of these same zonings on more
22 than one interrogatory. Can we take all your
23 questions related to that center together to
24 orient, just to keep things oriented? I don't
25 know that you will have any other questions

1 related to Kadampa Center. That may have
2 answered all of them.

3 MS. JONES: It may have. Let's see if
4 it did.

5 MS. HENDERSON: Okay. I'm just trying
6 to keep it clear so --

7 MS. JONES: I understand.

8 MS. HENDERSON: -- we can all follow
9 it a little easier.

10 Q (By Ms. Jones) So the second question was
11 provide a list of any instances during the zoning
12 process when the City requested that an applicant for
13 a church or other place of worship provide the
14 maximum capacity or maximum occupancy of each
15 accessory use within the church or other place of
16 worship. And you listed again the Kadampa Meditation
17 Center, but you did not, and let me be clear. The
18 only accessory use that you requested required
19 parking for was the boarding house use?

20 A And that would be, I believe, because that
21 was the only significant space that beyond the, the
22 assembly area that, that we were dealing with.

23 Q So it wasn't necessarily each accessory
24 use, it was each significant accessory use?

25 A Well, we would ask for the information, but

1 it, then the determination needs to be made on
2 whether the use is really accessory or is really a
3 concurrent use that is occurring along with a
4 religious facility. And in this case, the, it is not
5 ordinary to have a residential use in a, of this sort
6 in a church facility. And it was large enough so
7 that it was clearly going to generate additional
8 traffic and additional parking, and so it was
9 addressed as a separate use.

10 Q Well, what do you consider in your mind
11 what an accessory use to a church is? Or could you
12 list what you think the accessory uses are?

13 A Well, I think that we would probably, and
14 it, and it may depend on size and not just on the
15 use. Generally speaking, churches have some office
16 space. They have some classrooms. They may have a
17 library. Those would be normal kinds of accessory
18 uses in a, in a church.

19 Q They might have a kitchen?

20 A They probably would have a kitchen.

21 Q And maybe a fellowship hall?

22 A Probably. Although if the fellowship hall
23 was large, it might become the larger facility. And
24 so that's, it depends. Again, it is a scale and a
25 determination at the time that the application comes

1 in. Because the intent of the ordinance is obviously
2 to address the maximum occupancy of the building and
3 then to, the other things go hand in hand. And if
4 things occur in conjunction with or if they occur at
5 off times, then they would be, they would be
6 considered accessory if they're relatively small.

7 Q But unless it was an accessory use that had
8 a separate parking requirement on, in the zoning
9 ordinance, you would not list it as an accessory use;
10 is that correct?

11 A I don't understand that question.

12 Q Well, we will go through all of the zonings
13 that you have here and just kind of list out what the
14 accessory uses are. In this case the accessory use
15 was as a boarding house which has its own parking
16 requirement under the zoning ordinance?

17 A No, I don't believe I said that the, the
18 boarding house was an accessory use. It is a
19 parallel use that is used by the church, but it
20 actually was approved for both uses. And that's in
21 condition 1A. And the parking is provided for either
22 of those uses because it is a separate use.

23 Q So you don't consider the boarding house an
24 accessory use?

25 A No. It is, it is something which is being

1 done in conjunction with this church, but it is not,
2 it is significant enough so that it is, and it is not
3 what would be normally -- most churches don't have
4 this kind of facility. And so the parking ordinance
5 really doesn't contemplate that kind of use at that
6 location. And so it was separately addressed in
7 part.

8 Q And you applied the zoning ordinance --

9 A That's correct --

10 Q -- to this requirement?

11 A -- yes.

12 Q How did you determine how many fixed seats
13 that church had?

14 A They provided the information on the fixed
15 seating to us.

16 Q There was no separate investigation to
17 determine whether the seating was fixed or not?

18 A We assumed that they, they, that churches
19 present us truthful information.

20 Q What is fixed seating anyway?

21 A Fixed seating is seating that, that is
22 either affixed to the facility or is difficult to
23 move and where the permanent arrangement remains in
24 place. And it's not where you move chairs in and
25 out. For example, you wouldn't apply that if you had

1 a gym that doubled as an, an assembly area because
2 you would be moving chairs in and out and there might
3 be different arrangements at different times and that
4 would be a non-fixed seating kind of arrangement.

5 Q Let me just make sure I don't have any more
6 questions about Kadampa since you've listed it
7 several times.

8 MR. DILLARD: What does Kadampa mean?

9 MS. JONES: It is a Hindu word for
10 meditation center.

11 THE WITNESS: Buddhist.

12 MS. JONES: Buddhist.

13 MR. DILLARD: Buddhist?

14 Q (By Ms. Jones) Please provide a list of
15 all instances in which, during the zoning process the
16 City requested the applicant for a church or other
17 place of worship to provide anticipated growth in
18 attendance or occupancy for a proposed church, and
19 you've listed Kadampa.

20 Could you find for me where you have even
21 considered anticipated growth of Kadampa?

22 A Well, if we maximize the parking, if they
23 do not request that that be reduced for some reason,
24 then the anticipated growth can be accommodated in
25 the facility as being zoned. If there is a reduction

1 in parking, then we would need additional
2 information. But in order to know that we are
3 properly parking the facility, we need to know from
4 them their, their anticipated growth is going to be
5 something that they can accommodate in that space and
6 with that parking.

7 Q And did Kadampa provide that information?

8 A They discussed it with us and we felt
9 satisfied. They were satisfied with the total amount
10 of parking. Now, they did indicate as part of their
11 discussion that although they were, they had the
12 ability to take the 15 percent MARTA reduction, but
13 they were not asking for that to ensure that they had
14 enough parking on site.

15 Q And is there any, is that anticipated
16 growth addressed in the staff report or in the
17 minutes?

18 A Well, it's discussed in the sense that they
19 did not request the MARTA reduction and that is in
20 the staff report.

21 Q So you took their not needing the MARTA
22 reduction to indicate to you that they did not
23 anticipate growing out of the 41 spaces they have
24 available?

25 A That's correct. The parking, the parking

1 requirements of the City are being met. If they, if
2 they are willing to meet the full parking
3 requirements of the City, then we work with them on,
4 then we assume that their, that their, the growth can
5 be accommodated in that building. And should they
6 need additional space, they would then have to rezone
7 and come back and provide additional parking for
8 anything additional.

9 Q I think that takes care of Kadampa because
10 the rest of the interrogatories are about the
11 Lutheran Church of the Apostles.

12 MS. JONES: That's an original, right?

13 But you want to keep those because we're going
14 to look at those some more.

15 MS. HENDERSON: I was going to say you
16 probably want me to have those here.

17 Q (By Ms. Jones) And you know, what I want
18 to do is I am just going to jump right in to the
19 Lutheran Church of the Apostles while I am fresh
20 because it's a big fat one. Thirty-one is my next
21 number.

22 (Documents were marked for
23 identification as Plaintiff's Exhibit
24 Nos. 32 and 33.)

25 Q (By Ms. Jones) I am going to show you

1 Exhibits 32 and 33 and see if you can identify those
2 exhibits.

3 A Thirty-three is the staff report to the
4 planning commission. Okay. This is the case
5 submitted to the planning commission.

6 Q And that's the site plan that was
7 considered?

8 A Before planning commission.

9 Q Do you know if that's the site plan that
10 was adopted?

11 A No, I don't because I don't have the case
12 that went to the mayor and council.

13 Q This is what was sent to us. Let's see.

14 MS. HENDERSON: I think we've got a
15 mixup on our questions and answers. Nancy was
16 testifying that No. 33 is the staff report that
17 went to the planning commission and then you
18 asked her about the site plan, if that was the
19 one that went to council. I think there's a
20 confusion as to between site plan and staff
21 report.

22 Q (By Ms. Jones) Were there recommended
23 conditions in the planning commission?

24 A There were, but I don't know that they are
25 the same as what was recommended to mayor and council

1 without looking at the case that was submitted to the
2 mayor and council.

3 Q This was what was made available to us.
4 And I really want to talk about Church of the
5 Apostles in a way that you can answer questions.

6 MS. HENDERSON: Would it be helpful,
7 do you want to just have somebody pull the
8 report to the mayor and council? I anticipate
9 that when you came to the city hall for review,
10 you flagged certain documents you wanted copies
11 of and that's what they copied.

12 MS. JONES: Well, I thought I had
13 flagged the mayor and council stuff, and this
14 is, this was the whole package I got.

15 THE WITNESS: I don't know, I mean
16 whatever you flagged, I'm sure, is what they
17 copied, but it may, they look alike except for
18 what is on the front. So I have a copy. If you
19 want to give me a minute to break, I will go and
20 see if we can't run some extra copies of it and
21 I will be glad to provide them.

22 MS. JONES: Okay.

23 MS. HENDERSON: They are not certified
24 or anything, but if you will trust me.

25 MS. JONES: That's okay.

1 (Discussion ensued off the record.)

2 MS. JONES: While you were gone, I
3 found a document that actually is a letter to
4 the property owner, I believe, that outlines the
5 conditions of zoning and --

6 THE WITNESS: Well, I still probably
7 need, yeah, I need the whole case in front of me
8 if you don't mind. I can be more intelligent
9 when responding with everything rather than some
10 of it. And I will be happy to provide that in a
11 moment when the copy machine isn't down. It's
12 the one that collates.

13 (Documents were marked for
14 identification as Plaintiff's Exhibit
15 Nos 34 and 35).

16 Q (By Ms. Jones) Okay. Now, I think we have
17 it and I need to give you back --

18 A The site plan is the same, so I checked
19 that.

20 Q So it has been zoned to the site plan that
21 is Plaintiff's 32, condition on that site plan,
22 correct?

23 A And to the conditions of zoning.

24 Q Now, how was the parking calculated for
25 the, this is the Church of the Apostles on Hammond

1 Drive and Glenridge?

2 A It was calculated one space per
3 three-and-a-half fixed seat in the largest assembly
4 area and it was also calculated separately for the
5 day-care.

6 Q So what did, what was the largest, what was
7 the number of fixed seats in the largest assembly
8 area?

9 A 450.

10 Q So what was the requirement for parking for
11 450 fixed seats?

12 A 129.

13 Q And what was the required parking for the
14 church?

15 A That's the church.

16 Q What is the required parking for the
17 day-care?

18 A I would have to go back and, and check
19 that. I don't have that in the, it isn't in the
20 analysis.

21 Q How many site, how many parking spaces are
22 provided on site?

23 A Without checking the site plan, I can't
24 tell you. 129.

25 Q So 129 spaces were required for this

1 sanctuary, the largest area of assembly?

2 A Yes.

3 Q And 129 are provided on site?

4 A That's correct.

5 Q So no additional spaces were required for
6 the day-care?

7 A I would have to go back and do the
8 calculation for the day-care because 50 percent of
9 the parking spaces of the church may be shared with
10 the day-care. And the calculation for the day-care
11 if it's either 50 percent of that 129 or less would
12 be included in the 129.

13 Q And I am looking and I'm not finding a,
14 this does not appear to have all the information that
15 was in -- okay. Turn to Page 20 of 359.

16 A Okay. The letter of intent?

17 Q Yes.

18 A Okay.

19 Q And that letter of intent was received from
20 Ashford Engineers who were representing the church;
21 is that correct? Or they were --

22 A Yes.

23 Q -- writing on behalf of the church?

24 A Yes.

25 Q Now, look at the second paragraph of the

1 letter of intent. If you would read that, read it
2 into the record and then let's talk about it.

3 A I'm sorry, which one did you ask for?

4 Q Second paragraph of the letter of intent --

5 A Okay.

6 Q -- starting the existing building.

7 A Has an approximate footprint of 20,000
8 square feet. The existing sanctuary will house a
9 congregation of approximately 175 members. The
10 proposed 8,770-foot facility -- foot family life
11 center will serve various functions and can
12 accommodate 450 removable seats for regular services
13 and special events. The main assembly room can also
14 house athletic, theatric, music and social functions.

15 Q And they propose, the next paragraph they
16 proposed 450 fixed eats?

17 A Yes.

18 Q And that was the number used to calculate
19 the required parking for the property?

20 A For the church.

21 Q For the church. 450 fixed seats at 3.5?

22 A Yes.

23 Q How were these seats fixed? He says in the
24 letter they are removable.

25 A They are removable, but they are fixed in

1 place almost all of the time and there's only one
2 configuration that works for the 450. And so they
3 maxed out the number of, the number of seats that can
4 go into the room. And even if they took some chairs
5 out, there would still be parking for 450.

6 Q If they took all the chairs out, then the
7 seats would not be fixed, would they?

8 A That's true. But that's, the intent is for
9 this to be a, a facility that, that is in place for
10 that use almost all of the time.

11 Q He says it can house athletic, theatric,
12 musical and social functions. They would have to
13 take the seats out to do that, wouldn't they?

14 A Not completely, no. They would, they would
15 leave some of the seating in. They might reduce the
16 seating. They would never exceed it.

17 Q So how does this calculation, so fixed does
18 not necessarily mean fixed, is that what you are
19 telling me?

20 A Fixed does not mean it's affixed to the
21 ground and can't be moved. I think I said that in
22 the beginning.

23 Q So fixed does not contemplate moving the
24 seats out, correct?

25 A Fixed contemplates that that's the maximum

1 number that you will have in there at any time and it
2 can be calculated.

3 Q That's the maximum number of seats?

4 A Yes.

5 Q Correct?

6 A Yes.

7 Q But fixed does not take it, fixed used as
8 to the Church of the Apostles does not take into
9 account that some sort of a function would occur that
10 would, the Church of the Apostles would decide to
11 take the seats out to allow for a big ballroom type
12 function?

13 A They could do that.

14 Q They could do that. Did you have that
15 discussion with them?

16 A The most people that would be in the room
17 would, we anticipated would be those which would be
18 seated when they had the 450 seats in the room. So
19 that is the largest parking requirement.

20 Q Well, now, did you, did you count the
21 other, what other accessory uses are on the site?

22 A Accessory or parallel?

23 Q Okay. We are going to have the day-care
24 center?

25 A The day-care was separately calculated and

1 that is in, those parking spaces are shared spaces
2 with the church.

3 Q So what other uses are in that church?

4 A They would have some classrooms and they
5 would have some offices.

6 Q How many classrooms?

7 A I don't have that with, I don't have the
8 floor plan here.

9 Q Did you calculate for purposes of required
10 parking the number of classrooms and spaces in the
11 classrooms?

12 A The assembly area is approximately
13 30 percent of the total square footage of the total
14 facility including, which goes, which includes the
15 day-care which is, is separately calculated in part.

16 Q How about, so you don't have a calculation
17 available of how many classrooms there are, religious
18 classrooms?

19 A Not without getting the site plan -- not
20 without getting the building plan, no.

21 Q How about the number of offices they have?

22 A No.

23 Q How about any other accessory uses?

24 A I would assume but don't know for sure that
25 they probably have a library and they probably got a

1 kitchen in the normal things that they would do as
2 part of their, their, as a church facility. The
3 day-care is not a normal part of the church facility.
4 It's really a separate operation that they run it
5 parallel.

6 Q They currently have a 20,000-square foot
7 building that will house a congregation of 175
8 members. That's their current, or it's not current
9 now because I believe they have opened their new
10 facility, but it was at the time of this zoning?

11 A That's correct.

12 Q So did they tear that down?

13 A I believe they added on to the front.

14 Q So is that sanctuary still there that can
15 house 175 members?

16 A I don't know how they have reconfigured the
17 area, but when they added the, the new, the new area
18 on. I don't have the floor plan before me.

19 Q So it's possible that you could during
20 church services have your main sanctuary,
21 8,770 square foot sanctuary with 450 fixed seats in
22 it at capacity. And you could also have in the other
23 existing sanctuary ever how many seats it would allow
24 for 175 people, correct?

25 MS. HENDERSON: Object to form.

1 THE WITNESS: I don't know.

2 Q (By Ms. Jones) You don't know whether that
3 is possible or not?

4 A I don't know the configuration of the space
5 at this time because I don't know whether they did
6 any renovation of the space that they, they
7 previously used for the sanctuary, so I don't know.

8 Q Wouldn't that, you didn't ask that question
9 when you were trying to calculate what the necessary
10 parking would be?

11 A I don't have it here and it's not before
12 me, so I can't answer the question.

13 Q It didn't come up as a consideration in
14 your staff report?

15 A It is not mentioned in the staff report and
16 the answer is I don't know.

17 Q So if we were to provide that information
18 from the Church of the Apostles, do you think you
19 could answer that question?

20 MS. HENDERSON: I am going to object
21 to form.

22 THE WITNESS: I would look at it. I
23 don't know.

24 Q (By Ms. Jones) But it is done now, right?
25 What would you do?

1 A I would answer your question if I could.

2 Q So the City applied, the City assumed that
3 the seating in the 8,770-square foot sanctuary was
4 going to be 450 fixed seats and applied the zoning
5 ordinance requirement to that sanctuary, correct?

6 A That's correct.

7 Q And there may or may not be a separate
8 calculation for the day-care center?

9 A There was a separate calculation. It's not
10 in the staff analysis, but there was a separate
11 calculation.

12 Q But whatever that calculation is would not
13 require more than a total of 129 parking spaces for
14 the entire site; is that correct?

15 A That's correct.

16 Q Do you know what the maximum number of
17 people able to use any particular room in the church
18 building at any one time is?

19 A No. I don't have a copy of the floor plan,
20 so I don't even know how it's laid out.

21 Q Does the City have a floor plan?

22 A The answer is I don't know.

23 Q I don't believe that there was a floor plan
24 provided to us.

25 MS. HENDERSON: To the extent that the

1 building was standing before the creation of
2 Sandy Springs, I don't know that the City would
3 ever have one if it wasn't -- to the extent that
4 the building added on to, there would have been
5 plans for that addition, but those plans would
6 not have necessarily included the older part of
7 the building that was not modified. And the
8 plans for building would not be a zoning issue
9 because they are a building issue.

10 THE WITNESS: Well, it, it probably
11 also goes beyond that. There would be, could be
12 modifications made that wouldn't require a
13 building permit at all. So there wouldn't be
14 any way that I could know without that
15 information.

16 Q (By Ms. Jones) So to your knowledge, you
17 don't know where the floor plan of the building for
18 the Church of the Apostles is?

19 A No.

20 Q Now, how about the fire code people, would
21 they have a floor plan?

22 A I don't know.

23 Q Should they? I mean is that something that
24 they keep in their files for each building in the
25 city?

1 A No. The building permits that were issued
2 in Fulton County are still with Fulton County. This
3 fire department would not have building plans for
4 anything that should be Fulton County.

5 Q So it is possible that Fulton County may
6 have a copy of the building permit? I mean if it
7 exists, would it be in Fulton County?

8 A Can I answer truthfully? The answer --

9 Q You ought to know.

10 MS. HENDERSON: You are supposed to
11 answer truthfully.

12 THE WITNESS: I can answer truthfully.
13 The answer is first of all, this is a relatively
14 old building. So I doubt very much that Fulton
15 County has any floor plans for it. But should
16 they have them, they probably are unable to find
17 them because they just moved all of the records
18 to Fulton Industrial Boulevard and it's my
19 understanding that nobody can find anything in
20 those boxes because they are not properly
21 labeled. So that's my answer. And it's
22 truthful.

23 Q (By Ms. Jones) I don't doubt the truth of
24 your answer.

25 Okay. With respect to the entire site,

1 does the City have any capacity limits on how many
2 people can be on the site at any one time?

3 A The fire code controls specific areas of
4 the buildings, but I, in terms of the total number of
5 people in a building, we wouldn't have any way of, of
6 monitoring that.

7 Q So is the answer to that then no?

8 A It's, it's neither yes nor no. It is what
9 it is.

10 Q Let me ask you, do you know the maximum
11 number of people that can be in the buildings on that
12 site at any one time?

13 A I do not.

14 Q Do you know anyone who does know that?

15 A You would, the, the capacity of rooms is
16 controlled under the fire code, and the fire marshal
17 would have such information for those rooms to which
18 it applies.

19 Q When you say for those rooms to which it
20 applies, does it apply to some rooms and not others?
21 How does that work?

22 A Well, generally the enforcement is for
23 places of public assembly. So I don't know that
24 every room in the building would be monitored and
25 have a separate occupancy.

1 Q So you could have, your enforcement would
2 be the main place of assembly, the sanctuary, how
3 many people are in the sanctuary?

4 A You are, you're really better off asking
5 the fire marshal these questions because you're
6 dealing outside my area of knowledge.

7 Q I feel like I have been there before.

8 Are you aware that the Church of the
9 Apostles owns the building next door on Glenridge?

10 A Yes.

11 Q Have they proposed any plans for use of
12 that building?

13 A Not to my knowledge.

14 Q To your knowledge, there's no pending
15 application to use that building for any church
16 purposes?

17 A Not to my knowledge.

18 Q Other than the conditions of zoning that
19 are in the Exhibit 35 --

20 A Let me give you a better response to the
21 prior answer.

22 Q Okay.

23 A And that is the only page that, that I have
24 information on is the piece under the case. And that
25 property adjacent is under a separate legal and it's

1 not included in the legal on this. So there would be
2 no, there is no provision under our current case for
3 this.

4 Q If the City had not considered the seating
5 fixed in that sanctuary, the 8,770-foot sanctuary, if
6 it were not fixed seating but it were the other type
7 of seating under the ordinance without the seating,
8 what would be the parking requirement?

9 A It would be one per 35 feet in the largest
10 assembly room.

11 Q Can you calculate that?

12 A Do we have the square footage in the
13 assembly room?

14 Q 8,000 --

15 A Just a minute. If you will read me the
16 total.

17 Q 8,770 square feet.

18 A Just a minute. I'm not doing this right.

19 Q It's on the other page, isn't it?

20 A It may be.

21 Q It's on the second page, I believe.

22 A I know. I --

23 Q Churches and other places of worship.

24 A It's one per 30. Let me try this one more
25 time.

1 Q It's absolutely counterintuitive how you do
2 that.

3 A I know.

4 Q I was messing with it the other day and
5 Doug had to come in and fix my math for me.

6 MR. DILLARD: It doesn't make any
7 sense.

8 Q (By Ms. Jones) To figure it out.

9 A I'm not sure I've calculated this right.
10 I'm going to, I'm not going to take responsibility
11 for it until I have got it --

12 Q So for every thousand of square feet --

13 A Right.

14 Q -- it's, it's --

15 A Thirty.

16 Q -- 30. So if there's 8,000 square feet,
17 you would multiply eight times 30, right?

18 A That's, that's correct. And it's 240.

19 Q And that's 240?

20 A Yeah.

21 Q And then what extra over that for the 770
22 square feet?

23 A So I had it right.

24 Q So you would need at least 240 seats if
25 they were not fixed, correct?

1 A That's correct.

2 MS. DANOS: 240 parking places.

3 MS. JONES: 240 parking places if the
4 seats are not fixed. Thank you, Deb.

5 Q (By Ms. Jones) I think that's all I have
6 with the Church of the Apostles. I have got this
7 marked 34. Let's just identify it so we don't have a
8 gap.

9 Is that a letter from the City verifying
10 the zoning?

11 A Yes.

12 Q And here's the second page.

13 A Oh, I'm sorry.

14 Q So the next one we are going to talk about
15 is Congregation Beth Tefillah?

16 A Uh-huh (affirmative).

17 Q And that was also part of your
18 interrogatory answer as to requesting an applicant to
19 provide the maximum capacity or maximum occupancy of
20 each accessory use within the proposed church or
21 other place of worship. And you said that a use
22 permit to allow for the addition of 7,576 square foot
23 preschool at the existing synagogue with concurrent
24 variance was one instance with Beth Tefillah. And at
25 the same time I believe there was a use permit issued

1 for a mikvah synagogue?

2 A Yes.

3 Documents were marked for
4 identification as Plaintiff's Exhibit
5 No. 36.)

6 Q (By Ms. Jones) How did the City calculate
7 the required parking for Beth Tefillah?

8 A One, one parking space per three-and-a-half
9 fixed seats in the largest assembly area, and then we
10 separately calculated the child care area.

11 Q So how many fixed seats were in the largest
12 assembly area?

13 A Seven --

14 Q Well, that was seventy-six spaces.

15 A I meant, I would have to go back and
16 calculate.

17 Q Do the backward math?

18 A Uh-huh (affirmative).

19 Q How many spaces were required for the
20 day-care center?

21 A Twenty-nine.

22 Q So what was the total number of spaces
23 required?

24 A Let's see. Seventy-six plus 29.

25 Q Well, you have done the math inside the

1 paragraph. At a minimum, the site is required to
2 have a total of 105?

3 A Yes.

4 Q And did the site have 105 spaces?

5 A I believe it was short some spaces.

6 Q How many spaces? That paragraph says that
7 also.

8 A It does, but it doesn't completely deal
9 with the issues. So it -- let's see. They have 71.
10 So they would be short, under that calculation they
11 would be short the difference. However, this
12 doesn't, it doesn't take into account the shared
13 parking arrangement under Article 18.

14 Q I will get to that.

15 A Yeah.

16 Q So they were short 34 spaces; is that
17 correct?

18 A Well, no, it's not.

19 Q 71 --

20 A It's, it's not --

21 Q 105 to 71?

22 A It's not correct because the statement by
23 the shared parking spaces is not in, in the
24 calculation.

25 Q Without the shared parking spaces, they are

1 short 34 spaces?

2 A That's correct.

3 Q So they were required to provide 34 spaces
4 somehow and they did it through a shared parking
5 arrangement?

6 A Yes.

7 Q And that was with Greenfield Academy?

8 A No. I, I, I need to correct, and that's
9 why I was trying to get the record corrected. A
10 church is, during the week does not, you, you can
11 share 50 percent of your spaces. So you can take, of
12 the church's parking, you can take 50 percent of what
13 is required for the church and assign it to the
14 day-care center.

15 Q So the sentence that says the applicant has
16 provided documentation of a shared parking agreement
17 with the Greenfield Academy which has 100 spaces
18 available is incorrect?

19 A No. They have provided that information.
20 However, their only short, if you take -- let me see
21 if I can --

22 MS. HENDERSON: Start at the
23 beginning.

24 THE WITNESS: Yeah.

25 MS. HENDERSON: Start at the

1 beginning.

2 THE WITNESS: The, the church is
3 required to have 76 spaces. Can I write this
4 down so I can remember this?

5 Q (By Ms. Jones) Sure. Do you want some
6 paper?

7 A Yeah. The church is required to have 76
8 spaces. The day-care requires 29 spaces. The church
9 can share 50 percent of its spaces with the day-care
10 during the week. That would make 38 additional
11 spaces that are available to the day-care. So you
12 can subtract that from the 105 and that means that
13 there are 77 spaces required. And they have provided
14 71. And so the agreement with Greenfield Hebrew
15 Academy really only requires that they provide the
16 additional six spaces that the site would be short
17 under that calculation.

18 Q So they got their six spaces from
19 Greenfield Hebrew Academy?

20 A Yes.

21 Q And how far is Greenfield Hebrew Academy
22 from the congregation of Beth Tefillah?

23 A It is just up the road a little bit. But
24 it's more than, it's more than 300 feet.

25 Q That was not mentioned in the staff report,

1 was it?

2 A It was not and it should have been. This,
3 there, there was no administrative permit issued for
4 that either and that was incorrect as well.

5 Q And how about for the zoning district, what
6 zoning district is the synagogue in?

7 A R2.

8 Q Is shared parking under 19.3.6 allowed in
9 the R2 district?

10 A There, there is a, an approved school and
11 church on that site. And so the shared parking may,
12 may occur from the church.

13 Q Well, would you look at the zoning, that
14 particular provision which, I think, is on 28. It's
15 on the other exhibit.

16 MS. HENDERSON: 27?

17 MS. JONES: It's on the one-pager,
18 yeah.

19 Q (By Ms. Jones) Does that control shared
20 parking for the zoning ordinance?

21 A It does. And I was incorrect. It would
22 require a variance. However, the shared parking is
23 allowed for churches and that's what I was trying to
24 deal with under 18.2.2. And I will acknowledge to
25 you that this one was not handled correctly.

1 However, no variance was applied for. Even though
2 the facility requires people walk to the services.

3 Q So Section 19.3.6 which sets out the zoning
4 districts that shared parking is allowed in is, does
5 not apply to Section 18.2.2? That trumps that
6 zoning?

7 A That's, that's correct. They would, they
8 really would, they need a variance for the six
9 spaces.

10 (Document's were marked for
11 identification as Plaintiff's Exhibit
12 No. 37.)

13 Q (By Ms. Jones) And now, I'm looking at the
14 site plan for Beth Tefillah which is here on 37 and
15 I'm afraid I don't have a legible small one. But I
16 believe you can reference the actual zoning site plan
17 dated January 16th, 2007. That should be this one.
18 I think I saw that date.

19 A Yes, uh-huh (affirmative).

20 Q So that would be the site plan that was
21 approved for Beth Tefillah?

22 A Yes.

23 Q And besides the synagogue and -- where are
24 those fixed seats that need 76 spaces?

25 A I don't have the, the floor plan for the

1 synagogue, so I can't tell you.

2 Q So the 76 fixed seats were just based on
3 what they submitted? That was the number of fixed
4 seats?

5 A I can't tell you what the staff analysis
6 would have been in terms of, they may have gone out
7 and looked at it or they may have something that I
8 don't know.

9 Q Did you do a staff analysis on the case?

10 A The staff analysis was done. I didn't see
11 anything in there about that. The answer is I don't
12 know what information was provided to the staff.

13 Q Who did the staff analysis?

14 A That would have been Patrice Ruffin.

15 Q I was under the impression, I guess, from
16 last time that you reviewed all of the staff analysis
17 before they were submitted.

18 A I do, but I might not necessarily see what
19 she had seen. If she went to the site to look at it,
20 for example, and that was the information she was
21 using, I wouldn't have any way of knowing that.

22 Q Would she have gone to the site? Is that a
23 standard part of a staff analysis?

24 A Yes.

25 Q Now, was the building permit issued in

1 Sandy Springs for the Beth Tefillah?

2 A For the synagogue?

3 Q Yes.

4 A No.

5 Q That is Fulton County also?

6 A Yes.

7 Q And are you saying that there is no
8 building plan for Beth Tefillah on file with the City
9 of Sandy Springs?

10 A Not that I am aware of.

11 Q I am just curious how the City would not
12 have a building plan on file for every public place
13 of assembly in the city. I mean it is just hard for
14 me to understand that the City would not think that
15 was a, a public safety issue --

16 A I don't think --

17 Q -- that would require --

18 A -- the City disagrees with you. I don't
19 think that's the question. There's nothing under the
20 law that allows me to go back and get those from
21 people that previously permitted their properties.
22 And I, if I can't get them from Fulton County, I
23 don't have a way of doing it. Certainly it would be
24 helpful, but we don't have them.

25 Q So if I'm understanding you correctly, then

1 you have no way of knowing what the individual spaces
2 are for, in the 19,036-square foot building that is
3 called the existing synagogue other than it's the
4 existing synagogue?

5 A That's correct?

6 Q And when the staff did their report, they
7 did not count any spaces except in the largest place
8 of assembly to calculate the number of parking spaces
9 that would be necessary for the religious use?

10 A All of it is a religious use. That is not
11 correct. Both the day-care and the synagogue are
12 religious uses, but they are different religious
13 uses.

14 Q And when you say all of it's a religious
15 use, the offices are also considered a religious use,
16 correct?

17 A That's correct.

18 Q And the various classrooms and areas of
19 fellowship, the whole --

20 A We are not aware that they are renting any
21 space out to anyone else.

22 Q So if it is being used by the church for
23 church purposes even if it's admin purposes, it is
24 considered a religious use?

25 A I don't question the fact that it's all a

1 religious issue. The, the issue for us is not
2 whether it is a religious use but whether the parking
3 is appropriately calculated.

4 Q Does the Sandy Springs zoning ordinance
5 other than Section 18 that we have been looking at
6 have any other calculations for required parking for
7 churches and places of worship? Other than what is
8 in that Section 18.

9 A The answer is I'm not sure that I can say
10 for a certainty that there's nothing else in the
11 ordinance that applies to sizes or, or definitions of
12 parking spaces or anything else. So I, I'm not going
13 to answer that I know.

14 Q As to the Beth Tefillah, the City applied
15 the parking requirements obtained in Section 18.2,
16 correct?

17 A For both uses, yes.

18 Q For both uses, okay. Would the tax
19 commissioner have the information about the floor
20 plan of the properties?

21 A Certainly the tax commissioner wouldn't.
22 He just sends the bills.

23 MR. DILLARD: Assessor's office would,
24 though.

25 MS. JONES: Would they?

1 THE WITNESS: They might, yeah.

2 MR. DILLARD: Tax.

3 MS. JONES: So that would be Fulton
4 County essentially?

5 THE WITNESS: Well, except that the,
6 this is exempt, so I don't know. I don't know
7 how that is handled. And you would have to talk
8 to the assessor to get that information.

9 Q (By Ms. Jones) St. Andrews Presbyterian
10 Church. This is 38.

11 (Documents were marked for
12 identification as Plaintiff's Exhibit
13 No. 38.)

14 Q (By Ms. Jones) Let me show you what is
15 marked as Exhibit 38. I believe in your
16 interrogatory responses you have, Interrogatory No. 1
17 you have listed St. Andrews Church U007005. I think
18 it is down at the bottom of the page and then
19 continued to the next page.

20 A Yes.

21 Q Is this the staff report for St. Andrews?

22 A Yes.

23 Q And you say that they approved a
24 10,000-square foot to be of, of the church to be used
25 as a special foreign language school. That's the

1 topic of your interrogatory response.

2 A Yes.

3 Q Did they use the requirements of the zoning
4 ordinance that is in Plaintiff's 28 for churches and
5 day-care or for schools?

6 A Eighteen? Eighteen?

7 Q Oh, Section 18 but Plaintiff's Exhibit No.
8 28.

9 A Oh, I'm sorry. I'm sorry.

10 Q I understand.

11 A I apologize. I'm looking, and this doesn't
12 seem to be -- okay. I've got -- yes, they would have
13 used Article 18 which is Exhibit 28.

14 Q Do they apply anything other than
15 Article 18?

16 A Not to my knowledge.

17 Q And I believe they came back again in 2009.
18 And I am going to give you No. 39.

19 (Documents were marked for
20 identification as Plaintiff's Exhibit
21 No. 39.)

22 Q (By Ms. Jones) You might have two
23 St. Andrews somewhere. You do, under use permits on
24 Page 9, well -- Page 9 of your interrogatories.

25 A It's on, I, I think, in several.

1 Q Down there somewhere?

2 A Yeah. It's in, I think, several.

3 Q And they came back and they wanted an
4 additional 2,000 square feet and a use permit to
5 expand their enrollment?

6 A That's correct.

7 Q Was that analyzed under zoning ordinance
8 Section 18, Article 18?

9 A Yes.

10 Q Was any other section of the Sandy Springs
11 zoning ordinance calculated to the required amount of
12 parking?

13 A Not to my knowledge.

14 Q Was there any kind of limits placed on the
15 number of children who could be on site?

16 MS. HENDERSON: Which application are
17 you talking about?

18 MS. JONES: On either application.

19 MS. HENDERSON: Do you have a copy of
20 39?

21 MS. JONES: Sorry.

22 THE WITNESS: Yes.

23 Q (By Ms. Jones) What were those limits?

24 A Which case would you like to --

25 Q Start with the earlier case.

1 A The first approval in '07 was for 60
2 students, hours of operation limited to 9:00 to 5:00
3 p.m.

4 Q How did the City plan to enforce that
5 limit?

6 A The, generally we ask the applicant to
7 provide the information to us on their enrollment
8 before school starts.

9 Q So that's what you did, you just took the
10 information from the, from the school? There's no
11 separate count?

12 A No. The, the City doesn't go in and count
13 them.

14 Q Let me show you --

15 A Do you want to now know from the second
16 case?

17 Q Yes. I'm sorry.

18 A The second case was much more complicated
19 because they were dealing with a larger range of
20 grades. And so the private elementary school has a
21 total enrollment of 70 students Monday through Friday
22 from 8:00 to 3:00, a day-care facility with a total
23 enrollment number of no more than 150 between 8:00
24 and 6:00 Monday through Friday, and a day-care
25 facility with a total enrollment of 50 limited to

1 Saturdays between 9:00 and 3:00.

2 Q In looking at the 2009, was that zoned to a
3 site plan?

4 A Yes.

5 Q Was it April 8th, 2009, site plan?

6 A That's correct.

7 Q Let me just get you to look at Exhibit

8 No. 40. Would that be the site plan?

9 (Documents were marked for
10 identification as Plaintiff's Exhibit
11 No. 40.)

12 THE WITNESS: Yes.

13 Q (By Ms. Jones) And just going back to the
14 2005, was it zoned to a site plan?

15 A 2007?

16 Q 2007.

17 A Yes.

18 Q And was that site plan dated April 3rd,

19 2007?

20 A It was.

21 Q Let me get you to look at No. 41.

22 Is that the site plan that it was zoned to
23 in 2007?

24

25

1 (Documents were marked for
2 identification as Plaintiff's Exhibit
3 No. 41.)

4 THE WITNESS: Yes.

5 Q (By Ms. Jones) Generally speaking, other
6 than the conditions of zoning as set out in the, in
7 the motion and the approval, are there any other
8 conditions of zoning applied to a property?

9 A I don't understand the question.

10 Q I mean if there are conditions of zoning,
11 they are going to be listed, correct? When the
12 property is approved, it's going to say these are the
13 conditions of zoning, correct?

14 A Yes.

15 Q So other than meeting the requirements of
16 the zoning ordinance and the conditions of zoning as
17 specifically set out in the minutes, there are no
18 other conditions of zoning in Sandy Springs?

19 A There are other ordinances that may apply
20 to the development of the property, but they are not
21 under the zoning ordinance. They may be separate
22 ordinances.

23 Q Like building ordinances and electrical
24 ordinances and that sort of thing?

25 A Erosion control, tributary buffer, land

1 development, all of the, the standard ordinances of
2 the City that apply to development.

3 Q And that's another step, once you get your
4 zoning, then you have to comply with these various
5 ordinances?

6 A Yes.

7 Q Is that how it works?

8 A Uh-huh (affirmative).

9 Q You don't comply first with your erosion
10 control and then get your zoning?

11 A It wouldn't make a whole lot of sense to do
12 it that way.

13 MS. HENDERSON: Can we take a short
14 break?

15 MS. JONES: Yes, we can.

16 (A brief recess was taken.

17 (Documents were marked for
18 identification as Plaintiff's Exhibit
19 No. 42.)

20 Q (By Ms. Jones) Looking at Plaintiff's
21 Exhibit No. 42, it appears to be the latest and
22 greatest church or places of worship use permit; is
23 that correct?

24 A It is a day-care, an after school program,
25 yes.

1 Q And that is, I was unable to really figure
2 it out. Is that for the Hinson Center across the
3 street from the Sandy Springs Methodist Church --

4 A Yes.

5 Q -- or is it for the actual church area?

6 A I believe it's in the Hinson Center. Well,
7 let me look. Maybe not.

8 Q It's just, it was hard for me to tell.

9 A Let me read, let me read from it. It's on
10 the Hinson Center because it's south of Mount Vernon
11 and the church is on the north.

12 Q If you'll look at, tell me how the required
13 parking was calculated for this particular use
14 permit.

15 A I have to go back and --

16 Q It's on your Page 2102.

17 A Thank you.

18 Q And I did those two sided in order to
19 conserve paper, so --

20 MS. HENDERSON: It looks like we may
21 be missing some pages. Because I have got 2095,
22 then I have got 209 and 209. I wonder if my
23 secretary did that.

24 MS. JONES: Oh, I think the page
25 number --

1 MS. HENDERSON: Oh, it's cut off.

2 It's just cut off. Okay. Never mind. Okay.

3 Never mind.

4 THE WITNESS: Now ask your question
5 again.

6 Q (By Ms. Jones) Just go through how
7 required parking for this use permit was calculated.

8 A Well, there are two, it, it's calculated
9 under Article 18 and it is, there are two separate
10 calculations, one for the assembly auditorium at one
11 space for 30 square feet. And then for the day-care
12 center, 1.7 spaces per thousand square feet plus one
13 space for every four employees.

14 Q I am just, and so the total parking
15 required is 239. I'm just going back to where you
16 were explaining to me about how the day-care center,
17 that you subtract out some portion?

18 A We can. In this case they don't need to
19 because they have got more parking than is required
20 for the two uses they have at the facility. But if
21 they, if you had a church here, which you do not, I
22 believe that this is an auditorium and not a church.
23 The church facility is actually on the north side of
24 Mount Vernon, then you could have a shared, shared
25 space. But I don't believe they conduct their

1 services in this building. I believe this is a, a
2 facility that they have other uses for.

3 Q Do you know if there's a separate parking
4 requirement for the church across the street?

5 A The church across the street is under a, is
6 on a separate property. It's not even before us on
7 this.

8 Q That would be a totally separate --

9 A Yes.

10 Q -- calculation?

11 A Yes.

12 Q I went there not long ago and heard the
13 singers that don't use notes and they sing acapella.

14 MS. HENDERSON: The shape singers.

15 MS. JONES: The shape singers, yeah.

16 That's a nice little facility over there.

17 Q (By Ms. Jones) Let me show you Exhibit No.
18 43.

19 (Documents were marked for
20 identification as Plaintiff's Exhibit
21 No. 43.)

22 Q (By Ms. Jones) Now, what is, do you
23 recognize this particular use permit?

24 A I will look.

25 Q Or modification to use permit?

1 A Okay. I recognize it.

2 Q How was the parking calculated for this
3 application?

4 A I don't believe there's any difference in
5 the -- just a minute. Let me look at this a minute.

6 Q Was this application just a reconfiguration
7 of the site?

8 A Yes.

9 Q So there was no additional density added?

10 A That's correct. Because if it were, it
11 would require a new use permit.

12 (Documents were marked for
13 identification as Plaintiff's Exhibit
14 No. 44.)

15 Q (By Ms. Jones) This is the same Mount
16 Vernon Presbyterian School but at a different
17 location; is that correct?

18 A Yes.

19 Q And there was parking calculated for this
20 particular application, correct? I'm on Page 142 of
21 --

22 A Thank you.

23 Q -- 335.

24 A Thank you.

25 Q Was it calculated under Section 18.2.1 of

1 the zoning ordinance?

2 A Yes.

3 Q Were there any additional parking
4 requirements?

5 MS. HENDERSON: Object to form.

6 THE WITNESS: Actually that, can I
7 just give a more generic answer because it may
8 be more helpful. You may recollect when I said
9 that churches can share 50 percent of their
10 parking during the week. These modular
11 facilities are located on another church and
12 50 percent of the spaces that are allocated to
13 that church can actually be, be given to this,
14 these modular facilities. So there was no
15 additional parking required.

16 Q (By Ms. Jones) When you say these modular
17 facilities, now, this church is on the corner of
18 Mount Vernon and Glenridge; is that right?

19 A Yes.

20 Q And it sort of faces Glenridge?

21 A Yes.

22 Q Then are the modular facilities that big
23 gray concrete building behind the actual church
24 building?

25 A No. These are, well, these are temporary

1 classrooms.

2 Q Are they shown, if you go to Page 155.

3 A Well, let me, let me go back and check
4 again.

5 MS. HENDERSON: Can I get my copy of
6 that, Andrea?

7 MS. JONES: I'm sorry.

8 THE WITNESS: I'm sorry. It's in the,
9 the existing building on the back, yes.

10 Q (By Ms. Jones) What page are you looking
11 on?

12 A I am actually looking at 155 of 355.

13 Q What does, go to the page that says 179 of
14 Page 335.

15 Do you know what that represents?

16 A That represents both the subject property
17 and the school property.

18 Q And are those modular buildings shown on
19 that Page 179?

20 A They are not modulars. I was incorrect.
21 They are not modular. They are the use of those
22 existing structures at the back of the property.

23 Q And as I described --

24 A Yeah.

25 Q -- as being those --

1 A Yes.

2 Q -- concrete block buildings?

3 A Yes, that's correct.

4 Q And so this other part over here is all new
5 development for Mount Vernon Church? Is that what is
6 happening, the school is expanding?

7 A Well, it's a school that began
8 construction, I guess, in the late '90s when this
9 property was acquired and it has been developing over
10 time. It's in operation now, the main school is.

11 Q But is it part of the other Mount Vernon
12 Presbyterian school, are they the same group?

13 A It's the same church, they are under
14 separate zoning cases. And one is an upper school
15 and one is a lower school.

16 Q So the lower school is the one that is in
17 between Mount Vernon and Johnson Ferry?

18 A Yes.

19 Q We are getting to the home stretch here.
20 So this is going to be 45.

21 (Documents were marked for
22 identification as Plaintiff's Exhibit
23 Nos. 45 and 46.)

24 Q (By Ms. Jones) I am going to show you
25 Exhibit No. 45. Now, is that the variance petition

1 for the Zainabia Islamic Center?

2 A Yes.

3 Q Now, do you also review the Board of
4 Appeals reports also?

5 A Yes.

6 Q Have you seen this one?

7 A Yes.

8 Q How was the, and Zainabia, what does,
9 Zainabia wanted to increase the size of its
10 buildings; is that correct?

11 A I believe they are modifying and adding to.

12 Q It says new 50 by 54 building there.

13 A Yeah.

14 Q Is that what they were doing? They needed
15 a variance to do that on their parking?

16 A Yes.

17 Q And what they wanted to do was reduce the
18 number of parking spaces required from the 57
19 required to 42 spaces?

20 A That's the request, yes.

21 Q And that request was granted?

22 A Yes.

23 Q Do you know what percentage decrease in
24 parking that was?

25 A Not without calculating it.

1 Q Was that request analyzed under Section
2 18.2 or the variance to reduce the required parking?

3 A Yes.

4 Q Under 18.2.1 --

5 A Yes.

6 Q -- that was applied? Okay. Oh, go to Page
7 7 of 8 section of the analysis. It starts out
8 standards for consideration up at the top?

9 A Okay.

10 Q I am looking at the comment about whether
11 the relief would be in harmony with the general
12 purpose of the zoning ordinance. And the staff,
13 whoever wrote the staff report commented that the
14 church has been located on the site for 12 years with
15 20 parking spaces without a parking problem.

16 Is that, is that a criteria for determining
17 the amount of parking?

18 A If the place of public assembly is not
19 increasing, in this case I believe they were adding
20 some other things but not that, and this particular
21 facility has been operating for a lengthy period of
22 time with fewer parking spaces, then the additional
23 parking spaces that didn't reach the number seemed to
24 be an appropriate recommendation and met the standard
25 for the surrounding area. This was a building which

1 existed with significantly less parking previously.

2 Q And they are adding another building?

3 A They are adding another building which is
4 an accessory structure, but the existing
5 congregational hall was not increasing, I believe.

6 (Reporter interruption.)

7 MS. JONES: The existing
8 congregational hall.

9 Q (By Ms. Jones) So the parking was based on
10 the largest meeting area?

11 A Yes. They, they expanded the number of
12 parking spaces that they were providing on site which
13 was the reason for a number of the other variances
14 onto this particular application.

15 Q So before they got this variance, they were
16 short the required number of spaces?

17 A Yes.

18 Q And they are still short the required
19 number of spaces, but they got a variance?

20 A They are less short of spaces now than they
21 were before. They have provided additional spaces,
22 but there was not room to get the full number on the
23 site.

24 Q And my understanding is that one of the
25 reasons why the staff looked favorably on this

1 variance request was they had been operating just
2 fine with fewer spaces than required.

3 A The staff tried to get the maximum number
4 of spaces that they could get on the site knowing
5 that they had never had a parking problem with
6 significantly few spaces, but we tried to bring them
7 as close to the standard of the ordinance as we could
8 given that this was a legal nonconforming use under
9 the, under their previous arrangement.

10 Q They came in under Fulton County?

11 A Well, I suspect that they, and I don't know
12 this for a fact, that they developed at a point where
13 the parking -- well, then I will finish my sentence
14 which is that I don't know given the, the age of the
15 facility, it could have come under other parking
16 requirements than what we currently have.

17 Q I happen to have building plans for Mount
18 Vernon Baptist Church. And I would just like to look
19 at them briefly with you. Now, you should have them
20 facing your way, I think.

21 Now, were these building plans that were
22 approved by Sandy Springs?

23 A Yes. On February 9, 2007.

24 Q Is there any calculation for parking on
25 these plans that you can see?

1 A I don't believe there would be, but since
2 it's not a building requirement, I don't know that it
3 would be on here.

4 Q Let's just look through and see. It has
5 occupancy numbers on here.

6 A Well, this is a building permit and it
7 doesn't --

8 Q It doesn't address --

9 A I am looking to see if we, we did a
10 separate land side permit. Because if this is a
11 building permit, we wouldn't have done that part of
12 the building.

13 Q Do you know, this church has been here for
14 a while, hasn't it?

15 A Yes.

16 Q It came from Fulton County?

17 A Well, the, the renovation was.

18 Q Okay. Was with the City?

19 A With Fulton, was with the City, but the
20 place where you would see the parking requirements
21 calculated would be on the land development side
22 because the, the parking spaces are done on the
23 property and not in the building. And this is a
24 building permit. So unless there is, unless they did
25 a concurrent land development permit with it that I'm

1 not seeing on here, it wouldn't be here.

2 Q Well, how would I find out what the parking
3 requirement is as applied to Mount Vernon Baptist
4 Church? Oh, maybe it has a sanctuary in here?

5 A Well, the problem is that if it's a
6 preexisting church, the, we wouldn't repark it if
7 they were doing small renovations.

8 Q Would you say this is a small renovation?

9 A I mean I am looking at the, the renovation
10 area is 36,000 square feet. The addition is 441
11 square feet. So the renovation wouldn't, would not
12 generate the need for a change in parking. The only
13 thing that would be 441 which is relatively small.
14 So there may not have been a land development side
15 permit since it is such a small addition.

16 Q Is there someplace I would find that
17 information about what the required parking is at
18 Mount Vernon Baptist Church?

19 A Well, if this was constructed prior to us,
20 I don't know what would have applied at the time that
21 they got their permits. They would not be required
22 to provide additional parking on their existing
23 building because that was parked at the time of the
24 original permit. The only thing that would
25 potentially add parking would be the 441 square feet.

1 And if that was accessory, it wouldn't have generated
2 any additional parking. So the answer is I can't, I
3 can't answer for you what the parking requirements
4 would be at the time it was permitted.

5 Q Well, let me ask you as a hypothetical
6 would the City, I mean if this church were coming in
7 new, which it were not, and the City needed to
8 calculate required parking for it, how would it go
9 about doing so?

10 A We would use Article 18.

11 (Discussion ensued off the record.)

12 Q (By Ms. Jones) Just going back to the
13 Baptist church we were talking about before, Mount
14 Vernon Baptist Church, is that it? In approving a
15 building permit, and I don't know even if this is
16 your area, but would the City permitting department
17 require any kind of parking analysis before approving
18 the building permit for an existing church?

19 A If the permit changed the uses in the
20 building and increased the area of public assembly,
21 then the City would as part of that review address
22 parking issues. If it was just a, a, a
23 reconfiguration or a renovation interior and the, the
24 standards that applied to, out of the Article 18
25 wouldn't change that, we would not, there wouldn't be

1 any analysis to present. Generally speaking, these
2 existing buildings are allowed to remain as they were
3 permitted even though the, the codes may have changed
4 in the interim.

5 Q So they would have, they would have just,
6 if there was no increase in the largest assembly
7 area, then there would be no --

8 A Or some other provision that would generate
9 additional parking, yes.

10 Q Such as putting a boarding house in the
11 church?

12 A Right.

13 (Documents were marked for
14 identification as Plaintiff's Exhibit
15 No. 47.)

16 Q (By Ms. Jones) Let me show you Exhibit
17 No. 47 which is going back to, we have already talked
18 about -- this is double-sided copies. It's fat.
19 Yours is fat. These other ones are skinny.

20 Looking at Exhibit No. 47, this is going
21 back to the 2009 St. Andrews approval, there's a
22 discussion that I wanted to ask you if you remember
23 this discussion. It's on page Bates Stamp No. 1922.
24 There's some discussion about what the penalty would
25 be if the school is operating at an enrollment

1 capacity level outside of what is conditioned.

2 That's where Council Member Jenkins asked
3 the city attorney?

4 A Yes.

5 Q And Mr. Wendell Willard, who is the city
6 attorney, had an answer to that, that the City could
7 cite them for violation of their use permit and fine
8 them?

9 A Yes.

10 Q So that, that is an enforcement, a way to
11 enforce a violation of a capacity limit, correct?

12 MS. HENDERSON: Object to form.

13 THE WITNESS: Let me -- ask that
14 question again. I kind of got lost in it.

15 Q (By Ms. Jones) I guess the question is if
16 the City were to put capacity limits on a property or
17 a use and that property owner exceeded those limits,
18 according to this discussion and according, one
19 option the City would have would be to issue a
20 citation?

21 A Yes.

22 Q As a violation of the use permit. And a
23 fine?

24 A Assuming they were convicted. The City, I
25 mean the staff issues the citation, but there has to

1 actually be a conviction.

2 Q Well, there's always a conviction because
3 when you go to code enforcement court, you are
4 presumed guilty.

5 MS. HENDERSON: Objection.

6 MS. JONES: I have been to code
7 enforcement court before. I know how that place
8 works. Okay. I'm through with that one.

9 (Documents were marked for
10 identification as Plaintiff's Exhibit
11 No. 48.)

12 Q (By Ms. Jones) And I believe this is the
13 last one I have. I don't think I made copies of
14 this. We are going to call it 48. And I only really
15 have one question for you on this one which is the
16 Carpenter Drive Second Church of Christ Scientist.

17 Did the staff analyze parking requirements
18 under Article 18 of the code? And I believe that
19 green sticky is the place --

20 A Thank you.

21 Q -- that you can look.

22 A Yes.

23 Q Do you know of any instance in which the
24 staff in analyzing parking did not apply Article 18?

25 A No.

1 Q Now, I'm at the end of my line. I have one
2 or two questions written down somewhere that I have
3 got to find now. So two minutes out.

4 (A brief recess was taken.)

5 Q (By Ms. Jones) Did you attend the CZIM
6 meeting for the Church of Scientology?

7 A Yes.

8 Q And did, was any kind of presentation made
9 regarding the, whether or not the church complied
10 with the parking requirement of the City?

11 A I don't remember.

12 Q So you don't remember Linda Aberay telling
13 the people at the public hearing that the church was
14 in compliance with the requirements under the Sandy
15 Springs code?

16 A I just don't remember.

17 Q You don't remember that part either?

18 A I don't. But I know I was there.

19 Q Was there ever any report issued which
20 opined that the City required, complied with the
21 requirements of the Sandy Springs code?

22 A I don't know.

23 Q Well, it wouldn't have been issued by you,
24 correct?

25 A I, not to my recollection certainly, but I

1 don't, I am saying I don't remember.

2 Q Let me just fumble with my papers for a
3 minute --

4 A Uh-huh (affirmative).

5 Q -- and then we will be done.

6 (Discussion ensued off the record.)

7 MS. JONES: I guess that's all the
8 questions I have, what I thought were the extra
9 questions. So we will just tie these things up
10 and be done. Thank you, Nancy.

11 THE WITNESS: Okay.

12 (DEPOSITION CONCLUDED.)

13

14

15

NANCY LEATHERS

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18 Sworn to and subscribed before me,
19 this the ____ day of _____, 2010.

20

Notary Public
My commission expires:

21

22

23

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25

1 E R R A T A S H E E T

2 I, NANCY LEATHERS, do hereby certify that I have read
3 the foregoing deposition and that to the best of my
4 knowledge said deposition is true and correct (with the
5 exception of the following corrections listed below).

6

7 Page/ line / correction reason

8 ____/ ____/ _____

9 ____/ ____/ _____

10 ____/ ____/ _____

11 ____/ ____/ _____

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1 C E R T I F I C A T E

2 G E O R G I A :

3 FULTON COUNTY:

4 I hereby certify that the foregoing transcript
5 was taken down, as stated in the caption, and the
6 questions and answers thereto were reduced to
7 typewriting under my direction; that the foregoing
8 pages 1 through 78 represent a true, complete and
9 correct transcript of the evidence given upon said
10 hearing; am in compliance with O.C.G.A. Section
11 9-11-28(d) and Section 15-14-37(a) and (b); and I
12 further certify that I am not of kin or counsel to the
13 parties in the case; not in the regular employ of
14 counsel for any of said parties; nor am I in anywise
15 interested in the result of said case.

16 This the 8th day of November, 2010.

17

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Debera J. Puckett, B-1188

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AMENDED CERTIFICATE

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STATE OF GEORGIA
COUNTY OF FULTON

I hereby certify that in addition to the
certification made on Page 79 of the transcript, more
than thirty (30) days provided the deponent to read and
sign the original transcript has expired. Therefore,
the original is being filed without signature of the
witness.

This the 13th day of December 2010.



Debera J. Puckett
Certified Court Reporter